

CRIMINAL APPEAL NO. 30 OF 1985.

Date of decision: 9.2.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. Nigam Shukla, APP, for appellant-State.

Mr. P.B. Bhatt, advocate, appointed, for respondents.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R.R.Jain, J.

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February 9, 1996.

Oral judgment:

State has preferred this Appeal against order of acquittal passed by learned Judicial Magistrate, First Class, Bajana, in Criminal Case No.782 of 1983, in relation to complaint received by Police Station, Dasada, and registered under Sections 323 and 114 of IPC and 135 of the Bombay Police Act.

According to the prosecution, original complainant, being an employee of P.W.D., was working on road on 24.10.1983 at about 9.30 A.M. At that time, the accused were passing by the side of complaint with herds. All of a

sudden, accused No.1 assaulted the complainant with stick embeddled with metal rings. As a result of this assault, the complainant fell in chokdi (pool of water) and was unable to take care of himself. Seizing this opportunity, accused Nos.2 and 3 also attacked and assaulted the complainant with sticks also embeddled with metal rings. Hearing his screams and shouts, other labourers working there, tried to intervene as a result of which the accused made good their escape from the scene of the offence. Thereafter, the complainant went to hospital for treatment and also lodged complaint with Dasada Police Station. It is in this background that the investigation was set in motion and finding prima facie evidence, charge-sheet was filed for offences under Sections referred to above against the accused in the Court of learned Judicial Magistrate, First Class, Bajana, who, after recording evidence, passed acquittal order.

Heard Mr. Nigam Shukla, learned A.P.P. for the appellant-State and Mr. P.B. Bhatt, learned advocate, who has been appointed by Court to represent the case of respondents.

Inviting my attention to the evidence of the complainant as well as other witnesses purported to be eye witnesses, Mr. Shukla has vehemently argued that the version of the complainant about inflicting stick blows by accused No.1 does get corroboration from all other witnesses. In other words, it is argued that as regards the main event all the witnesses are consistent and, therefore, according to the A.P.P., learned Magistrate was not right in discarding the evidence and giving acquittal. Mr. Bhatt, learned advocate for respondents, has invited my attention to several material contradictions and inconsistencies as regards the version given by other witnesses.

Coming to the evidence of complainant, he states that as a result of blow given by accused No.1, he fell down and was thrown into a chokdi. Thereafter seizing this opportunity, accused Nos.2 and 3, who were following accused No.1, also assaulted him with sticks. But, unfortunately, later part of his version does not find any place in the FIR placed on record at Ex.6, and, therefore, to this extent, we find an improvement and this improvement does not get corroboration from any of the witnesses except witness P.W.6, Sabina Husainbhai, who is daughter of the complainant. It is needless to say that Sabina being daughter of the complainant would naturally be an interested witness and try to settle

score with accused by false implication since are at inimical terms. In this case, admittedly, the complainant and the accused are at inimical terms owing to some incident which had taken place about 1 1/2 years before the incident and, therefore, his evidence has to be screened and scrutinised and appreciated with care and caution. In such circumstances, the evidence coming from the complainant must get corroboration from independent witnesses. As discussed above, Mr. Bhatt has taken me through the evidence of other witnesses also and I find material inconsistencies with regard to the main event and, therefore, it would be hazardous to rely upon evidence of such witness so as to convict accused as the evidence cannot be said to be reliable and trustworthy.

As a cardinal rule, version of prosecution must always get corroboration from medical evidence so as to make it trustworthy to convict a person. In this case, the P.W.3, doctor has been examined at Ex.11. Injury certificate has been produced at Ex.12. The injury certificate reflects following injuries:

1. A swelling 3"x2" over right parietal region.
2. A swelling 2"x2" over right forearm lateral aspect proximal 1/3.
3. A contusion 2"x1" over lf.scapular region, red in colour.
4. A wheelmark 2"x1" over lf. arm drital 1/3 posterolateral aspect.

According to the doctor, injury Nos.1, 2 and 3 are possible if one falls on tar road and as regards injury No.4, which is in the nature of wheelmark over left arm, he opined that it is possible by hard and blunt substance like stick, pipe, etc. Injury No.1, swelling 3"x2", is found over right parietal region whereas injury No.2 is swelling on the right forearm lateral aspect and injury No.3 is contusion over scapular region. Thus, admittedly, all the injuries were found on the upper part of the body whereas it is the case of the prosecution that one of the accused gave blow on waist region and on legs, that is, lower limbs. If we accept this version, then injury must be found on the waist and legs, but the medical evidence is contrary, i.e., no injury is found in lower limb. In this view of fact, it becomes doubtful if any such incident as alleged by complainant ever occurred.

Even the recovery of weapons is also not supported by witnesses. Not only it is not supported by witnesses but the complainant himself has denied use of said sticks (muddamal article) by the accused. This is evident from his deposition, Ex.5. In Examination-in-chief, he has

categorically stated that the sticks which are produced and shown to him were not the sticks used by the accused while assaulting. He further states that the sticks used by the accused at the time of the incident were embeddled with metal rings whereas the sticks do not match the description. If this is so, the accused could not have used those sticks which are alleged to have been seized during investigation. This casts doubt about impartial investigation. With this set of evidence on record, in my opinion, the learned Magistrate was right in not believing and relying upon so as to convict the accused. Mr. Shukla has not been able to point out any evidence which has been ignored by learned Magistrate or has been wrongly appreciated. In conclusion, the evidence of prosecution is unreliable and not inspiring confidence and has been rightly discarded by the trial Court and thus the learned Magistrate has rightly acquitted the accused.

In view of this discussion, I do not find any substance in the appeal which must see its logical end of rejection. Accordingly, the appeal is dismissed.